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IN THE

Supreme Court of the United States

October Term, 1958

No. 962

CHRIS LAW,

Petitioner,

v.

UNITED FRUIT COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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No. .....

CHRIS LAW,

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UNITED FRUIT COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Chris Law, a merchant seaman, respectfully petitions that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on March 4, 1959.

Opinions Below

The opinion of the Court of Appeals for the Second Circuit which includes the majority opinion of Judge Leonard P. Moore and the dissenting opinion of Judge E. W[illegible] has not yet been reported. It is printed in the [illegible] hereto, *infra*, page 12.

Jurisdiction

The judgment of the Court of Appeals was entered March 4, 1959. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented

1. Whether the case of *Calmar S. S. Corp.* v. *Taylor*, 303 U. S. 525 has been overruled or whether it is still the law as expressed in the dissenting opinion, below.

2. Whether a merchant seaman, unrepresented by counsel, may sign an effective general release in the office of a steamship company, giving up his right to future maintenance and cure, while under the influence of beers and whiskeys (23a) where it appears that eight days after signing the release he becomes an in-patient at the United States Marine Hospital and subsequently receives extensive out-patient and in-patient treatment for the injuries sustained in the service of the steamship company.

3. Whether a merchant seaman is still a "ward of the admiralty", or whether the principles pertaining to this class of workers, followed since Mr. Justice Story's opinion in *Harden* v. *Gordon*, Fed. Case 6047, in 1823, have been overruled.

4. Whether a merchant seaman who receives a personal injury on board a vessel during the course of his employment, may sign away all his rights for indemnity without receiving any consideration (the trial judge below in his findings of fact having concluded that the $300. actually received by the seaman was "adequate" consideration for giving up his right to future maintenance and cure (18a).

5. Whether a merchant seaman who signs a general release for an inadequate sum has executed the release freely and with a full understanding of his rights as expressed by this Court in the case of *Garrett* v. *Moore McCormack Co. Inc.*, 317 U. S. 239.

6. Whether the rights of petitioner, a merchant seaman were fully protected where it appears that the trial court limited the determination of the adequacy of the consideration to the time of the execution of the general release, disregarding completely the several hospitalizations and extensive periods of treatment which followed (22a).

Statement of the Case

It is the position of the petitioner that to permit the majority opinion of the Court of Appeals to stand would, in effect, take away the protection given to seamen since 1823, and would sanction the execution of releases by seamen, in the office of steamship companies, where they are unrepresented, and under the influence of beers and whiskeys.

To sanction such a law would undermine important principles under which our merchant marine was founded. *Harden* v. *Gordon*, Fed. Case 6047; *Hume* v. *Moore McCormack Lines, Inc.*, (C. A. 2 1941) 121 F. 2d 336, cert. denied 314 U. S. 684.

The Facts

Petitioner, an able bodied seaman, signed on the *S. S. San Jose* on January 4, 1956. On March 23, 1956, while checking cluster lights under the direction of the boatswain, and while in the course of his employment, he fell off some mooring cable and seriously injured his back.

Petitioner was removed from the vessel by stretcher and taken by ambulance to the Roper Memorial Hospital at Charleston, S. C., where he remained as an in-patient from March 23, 1956 until April 3, 1956.

Petitioner returned to New York and then received continuous out-patient treatment at the United States Marine Hospital from April 5th to May 7, 1956.

On May 7, 1956, petitioner requested and received a fit for duty slip from the United States Marine Hospital.

On May 8, 1956, in the morning, petitioner received his final maintenance and cure check which covered the period from April 4, 1956 to May 7, 1956. Later in the day at the office of respondent at Pier 9, North River, New York, petitioner, having come from a bar and grill, under the influence of beers and whiskeys, and unrepresented, signed a general release, giving up all his rights and claims on account of his accident on board the vessel on March 23, 1956, including future maintenance and cure, for the total sum of $300.00.

On May 15, 1956, one week after the execution of the release, petitioner was at the United States Marine Hospital pleading for relief for his injured back. The following day, May 16th, petitioner became an in-patient and remained at the hospital until June 20, 1956. Petitioner at that time was declared not fit for duty and then received out-patient treatment at the hospital (18a, 19a).

On July 26, 1956, petitioner, still suffering back pain, became an in-patient again at the United States Marine Hospital, and remained in the hospital until August 23, 1956. After his discharge from the hospital, petitioner was again declared not fit for duty. (19a).

REASONS FOR GRANTING THE WRIT

1. The majority opinion of the Court below completely overrules and is in conflict with the opinion of this Court in *Calmar S.S. Corporation* v. *Taylor*, 303 U. S. 525, with respect to future maintenance and cure.

In *Calmar S.S. Corporation* v. *Taylor*, *supra*, this Court refused to grant an award to a seaman which embraced future maintenance and cure stating: "The award of a lump sum in anticipation of the continuing need of maintenance and cure for life or an indefinite period is without support in judicial decision. Awards of small amounts to cover future maintenance and cure of a kind and for a period definitely ascertained or ascertainable have occasionally been made."

Therefore, if awards cannot be made to cover the future needs of a seaman's maintenance and cure, how then can it be said that the law will sanction and approve a release signed by a seaman, unrepresented, coming from a bar and grill, under the influence of beers and whiskeys, in the back room of a steamship company, giving up all his rights to future maintenance and cure for a meager consideration?

Judge Gibson in his dissenting opinion in the Court below, correctly interpreted the law as follows:

> "Certainly if a court may not approve any award for future maintenance and cure without careful consideration, how may one uphold the right of a seaman—as a ward—a young heir—or a cestui que trust of a court to happily and blithely and mayhap filled with too much beer, release his rights to fu-

ture maintenance and cure at a time well ahead of that when an intelligent finding can be made as to his future maintenance and cure."

The admiralty bar awaits the answer to the question, Is *Calmar S. C. Corp.* v. *Taylor*, 303 U. S. 525, still the law?

2. A seaman who is "a ward of the admiralty" may not, when he is unrepresented, and under the influence of beers and whiskeys, discharge a shipowner from all liability for serious personal injury, where he receives an inadequate consideration or no consideration at all.

The principles regarding the theory of "wards of the admiralty" was first explained in 1823 by Mr. Justice Story in the case of *Harden* v. *Gordon*, Fed. Case 6047 (ee Me.) in an opinion which was quoted in part, 119 years later by this Court in *Garrett* v. *Moore McCormack Co. Inc.*, 317 U. S. 239. Justice Story said:

> "Every court should watch with jealousy an encroachment upon the rights of seamen because they are unprotected and need counsel; because they are thoughtless and require indulgence; because they are credulous and complying, and are easily overreached. But courts of maritime law have been in the constant habit of extending towards them a peculiar protective favor and guardianship. They are emphatically the wards of admiralty; and though not technically incapable of entering into a valid contract, they are treated in the same manner as courts of equity are accustomed to treat young heirs, dealing with their expectancies, wards with their guardians and cestuis que trust with their trustees. They are considered as placed under the

dominion and influence of men; and as they have little of the foresight and caution belonging to persons trained in other pursuits of life, the most rigid scrutiny is instituted into the terms of every contract in which they engage. If there is any undue influence, inequality in the terms, any disproportion in the bargain, any sacrifice of rights on one side which are not compensated by extraordinary benefits on the other, the judicial interpretation of the transaction is that the bargain is unjust and unreasonable, that advantage has been taken of the situation of the weaker party, and that pro tanto the bargain ought to be set aside as inequitable."

At the time petitioner signed the general release, he received no consideration whatsoever for indemnity against the shipowner for the serious injuries which he sustained aboard the vessel.

The $300.00 actually received by petitioner was considered by the trial court "adequate" consideration for the giving up of petitioner's right to future maintenance and cure. (Finding of Fact, No. 8, 18a.)

Even if respondent should argue that the $300.00 given to petitioner was in payment for indemnity and that nothing was given for the giving up of future maintenance and cure, can it be said that the $300.00 was adequate under the circumstances?

Petitioner's lost earnings, computed from the date of his accident, March 23, 1956, at his base wage of $314.41 (app. 17) excluding overtime, up until August 30, 1956, when he was declared fit for duty (19a) amounts to well over $1500.00.

Petitioner, at the time of his injury was working under orders from the boatswain, who directed him to check cluster lights (13a).

Petitioner in the course of checking these lights was compelled to stand on cable, which had been placed on deck under orders of the chief mate prior to the vessel's arrival at Charleston, S. C. (14a).

It is the petitioner's contention that under the law he did not, under the circumstances, assume the risks of his employment, *Socony-Vacuum and Oil Co. v. Smith*, 305 U. S. 424, and further that the vessel, *S. S. San Jose* was unseaworthy by reason of the presence of the mooring cable on deck, at the time of petitioner's accident.

Conclusion

The decision below is clearly erroneous. The general release executed by petitioner, unrepresented, while under the influence of beers and whiskeys, was invalid as a matter of law. To permit the decision to stand would open up the gates of steamship company offices for the execution of releases by unrepresented merchant seamen, contrary to law.

The decision of *Calmar S. S. Corporation* v. *Taylor*, has not been overruled, and the Admiralty bar still considers it to be the law.

Merchant seamen are still "wards of the court" and their releases should be set aside "if there is any undue influence, inequality in the terms, any disproportion in the bargain, any sacrifice of rights on one side which are not compensated by extraordinary benefits on the other". *Harden* v. *Gordon, supra.*

It is clearly evident that a mistake has been made which should be rectified. *Alison, Admx* v. *U. S. A.*, 1958 A. M. C. 1043; *McAllister* v. *United States*, 348 U. S. 19, 20. In

the exercise of its discretion, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

LEE S. KREINDLER,
Counsel for Petitioner.

Of Counsel:

MACK KREINDLER,
BENJAMIN GLICKMAN.

Opinions

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 80—October Term, 1958.

(Argued January 8, 1959 Decided March 2, 1959.)

Docket No. 25224

CHRIS LAW,

Plaintiff-Appellant,

—v.—

UNITED FRUIT COMPANY,

Defendant-Appellee.

Before:

CLARK, *Chief Judge*, MOORE, *Circuit Judge*, and GIBSON, *District Judge*.

Appeal by plaintiff, a seaman, from a judgment entered in the United States District Court for the Southern District of New York, Dimock, *D.J.*, dismissing the first cause of action of the complaint after jury verdict finding plaintiff's general release valid as to damages, and dismissing the second cause of action of the complaint for future main-

tenance and cure upon decision by the court that the claims therein had been effectively released.

Affirmed.

MACK KREINDLER, Esq., New York, N. Y. (Benjamin Glickman, Esq., New York, N. Y., on the brief), *for Plaintiff-Appellant.*

EUGENE UNDERWOOD, Esq., New York, N. Y. (Burlingham, Hupper & Kennedy, New York, N. Y., on the brief), *for Defendant-Appellee.*

MOORE, *Circuit Judge*:

Plaintiff (appellant), a seaman injured while working on a vessel operated by defendant, sued for damages (first cause of action) and for maintenance and cure (second cause of action). As a complete defense to both causes of action defendant pleaded a general release. Plaintiff appeals from a judgment in favor of defendant entered (1) upon a jury verdict against him after a trial on the first cause of action, and (2) upon the court's decision against him on the second cause of action for maintenance and cure.

To the question submitted in the first cause of action, "Did the plaintiff effectively release the defendant from liability for damages?" the jury gave the answer "Yes." The trial court reserved for itself the decision on the second cause of action and concluded that plaintiff effectively released defendant from liability for all future claims for maintenance and cure.

Plaintiff now raises the question whether as a matter of law he could effectively have released defendant from

all future claims for maintenance and cure where it developed that further treatment was required after he had signed the release. He urges as a proposition of law that "A seaman can never release the shipowner from future maintenance and cure."

Plaintiff was injured on March 23, 1956. He was hospitalized until April 3, 1956 and received out-patient treatment until May 4, 1956. On May 8, 1956 he executed a general release. For the period from April 4, 1956 to May 7, 1956 plaintiff had been paid maintenance. Upon signing the release he received an additional $300.

The law with respect to seamen's releases has been quite definitely stated both in this circuit and in the Supreme Court. In *Bonici v. Standard Oil Co. of New Jersey* (The S.S. Standard), 2 Cir., 1939, 103 F. 2d 437, cert. den. 308 U. S. 560 (1939), the court said: "We think the rule to be applied is that which apparently prevails generally as to seamen's releases in admiralty, namely, that such releases are not wholly invalid, but are jealously scrutinized to see that these 'wards of the admiralty' have not been overreached" (p. 438). The court continued, saying, "nevertheless a release fairly entered into and fairly safeguarding the rights of the seaman should be sustained. • • • Fair settlements are in the interest of the men, as well as of the employers" (p. 439). Shortly thereafter the test of validity was defined as "whether the seaman, if he is acting alone, has intelligence enough fully to understand the situation and the risk he takes in giving up the right to prosecute his claim or whether, if he is acting under advice, that advice is disinterested and based on a reasonable investigation." (*Sitchon v. American Export Lines, Inc.*, 2 Cir., 1940, 113 F. 2d 830, 832, cert. den. 311 U. S. 705 (1940).) A year later after a lengthy historical review of the status of the seaman Judge Frank concluded that, although the validity of a re-

lease should not be determined on a motion for summary judgment, a release could be sustained upon a trial "at which the burden will be on the appellee to sustain the release 'as fairly made with and fully comprehended by the seaman' (citing cases)." (*Hume* v. *McCormack Lines, Inc.*, 2 Cir., 1941, 121 F. 2d 336, cert. den. 314 U. S. 684 (1941).) The Supreme Court in *Garrett* v. *Moore-McCormack Co., Inc.*, 317 U. S. 239, 248 (1942), reiterated the law, saying that the burden was on the party relying upon the release "to show that it was executed freely, without deception or coercion, and that it was made by the seaman with full understanding of his rights."

The trial court in its charge correctly stated the factors to be taken into consideration as enunciated in the decisions cited. A portion of the charge illustrates the care with which the court instructed the jury on this point. The court charged:

> "Whether it is valid or not depends on many factors. To be valid it must have been executed by the plaintiff freely with full understanding of his rights and without deception or coercion on the part of the defendant. More than that, a release made by a seaman is to be carefully scrutinized to see that the seaman has not been overreached. On the other hand, a release fairly entered into and fairly safeguarding the rights of the seaman must be considered valid."

As to plaintiff's condition, both mental and physical, at the time of signing the court said:

> "In other words, you are to consider whether the plaintiff had enough intelligence fully to understand the situation and the risk he took in giving up the right to prosecute his claim. You may also consider what the knowledge of the parties was as to the seriousness

of the injuries and whether the amount he received was adequate in view of the situation as it appeared at that time.

"There is no evidence in the case that the plaintiff was intoxicated, but in considering whether the plaintiff fully understood the situation at the time of signing the release, you may consider testimony that he drank a few beers and whiskeys prior to the signing."

Burden of proof was properly stated:

"As to the matter of proving the validity of the plaintiff's release, the burden of proving its validity is upon the defendant."

The jury had before it all the facts from which it could properly evaluate the circumstances under which the release was executed.

The court's findings as to the effect of the release on the maintenance and cure cause of action are amply supported by the evidence. As this court said in *Bonici* v. *Standard Oil, supra*, to change the law as plaintiff would have it, namely, to declare that a release of future maintenance and cure could never be valid, "would be no kindness to the seaman" because "[f]air settlements are in the interest of the men, as well as of the employers" (p. 439).

The judgment is affirmed.

GIBSON, *District Judge* (concurring and dissenting in part):

I concur as to that part of the majority opinion that upholds the validity of the release as to damages.

But with great temerity—and all respect to the great and learned Courts of the Second and Ninth Circuits which have held that a seaman may, in appropriate circumstances, release his rights as to future maintenance and care (See

Bonici v. *Standard Oil Company of New Jersey*, 2 Cir., 103 F. 2d 437, cert. den. 308 U. S. 560 (1939), and *Clinton* v. *United States*, 9 Cir., 254 F. 2d 409), I must dissent.

As Justice Story so picturesquely stated many years ago—seamen are "wards of the admiralty • • • " or such as "young heirs dealing with their expectancies, wards with their guardians, and cestui que trust with their trustees." *Harden* v. *Gordon*, Fed. Cas. #6047, at pages 480, 485. Justice Story's description of seamen and their relationship to the shipowner are quoted with approval by Justice Black in the unanimous opinion of the Supreme Court in *Garrett* v. *Moore-McCormack Co., Inc.*, 317 U. S. 239, 246.

Our Supreme Court in *Calmar S.S. Corp.* v. *Taylor*, 303 U. S. 525, at pages 530, 531, had this to say: "The award of a lump sum in anticipation of the continuing need of maintenance and cure for life or an indefinite period, is without support in judicial decision. Awards of small amounts to cover future maintenance and cure of a kind and for a period definitely ascertained or ascertainable have occasionally been made."

In this instance, the Trial Court, after approving the jury's verdict upholding the release as to damages, held as a matter of law that the release was also effective as to future maintenance and cure. The Trial Court made no careful examination and analysis of the need of the appellant for future maintenance and cure for a definite ascertainable period. Yet the evidence discloses that within one week after the plaintiff signed the general release (May 8, 1956), he became an inpatient at the U. S. Marine Hospital, and remained such until June 20, 1956. This was for treatment for the injury received as a seaman. He continued to receive outpatient or inpatient treatment for this injury until discharged from this hospital on August 23, 1956, as "not fit for duty."

The *Calmar* case further states, pages 531, 532, that the "seaman's recovery must therefore be measured in each case by the reasonable cost of that maintenance and cure to which he is entitled at the time of trial, including, in the discretion of the court, such amounts as may be needful in the immediate future for the maintenance and cure of a kind which can be definitely ascertained.

"The court below has made no findings sufficient to enable us to fix the amount which respondent is entitled to recover. The decree is accordingly reversed and the cause remanded for further proceedings in conformity with this opinion, and without prejudice to any later suit by respondent to recover maintenance and cure to which he may then be entitled."

Certainly if a court may not approve any award for future maintenance and cure without careful consideration, how may one uphold the right of a seaman—as a ward—a young heir—or a *cestui que* trust of a court to happily and blithely, and mayhap filled with too much beer, release his rights to future maintenance and cure at a time well ahead of that when an intelligent finding can be made as to his future need of maintenance and cure.

E. W. G.
February 26, 1959.

Judgment

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the second day of March one thousand nine hundred and fifty nine.

Present:

HON. CHARLES E. CLARK,
Chief Judge
HON. LEONARD P. MOORE,
Circuit Judge
HON. ERNEST W. GIBSON,
District Judge

CHRIS LAW,
Plaintiff-Appellant,

v.

UNITED FRUIT COMPANY,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO,
Clerk.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1958

No. 962

CHRIS LAW,
Petitioner,
v.
UNITED FRUIT COMPANY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Proceedings below:

Petitioner's complaint claimed damages for alleged injuries on grounds of Jones Act negligence and maritime law unseaworthiness; also maintenance and cure under the maritime law. Respondent's answer denied negligence and unseaworthiness, denied liability for more maintenance and cure than had already been paid, alleged that petitioner's alleged injuries were caused or contributed to by his own negligence and alleged that petitioner had effectively released his claims.

The Court submitted the claim for damages, and the validity of the release, to the jury which found for respondent, and reserved to itself the claim for maintenance and cure and found for respondent.

As to the release the Court put a special question to the jury, viz.: "Did the plaintiff effectively release the defendant from liability for damages?" The jury answered "Yes". (R. 33, 42).

The Court's charge on the release question, to which petitioner took no exception, was as follows:

"There is also involved in the case a special defense which is raised by the defendant. This defense that is claimed by the defendant is that the plaintiff, after the accident, signed what is known as a general release of all his claims against the defendant. Since it is possible that your determination of that issue may decide the case, I will go into that matter with you before discussing the plaintiff's claims.

If the general release is found to be valid, it will prevent the plaintiff from recovering anything in this case. Whether it is valid or not depends on many factors. To be valid it must have been executed by the plaintiff freely with full understanding of his rights and without deception or coercion on the part of the defendant. More than that, a release made by a seaman is to be carefully scrutinized to see that the seaman has not been over-reached. On the other hand, a release fairly entered into and fairly safeguarding the rights of the seaman must be considered valid.

Releases are to be considered from the standpoint of the fairness of the conditions under which they are secured and of the fairness of the settlement which they constitute, judged according to the information available at the time of the signing. In other words, you are to consider whether the plaintiff had enough intelligence fully to understand the situation and the risk he took in giving up the right to prosecute his claim. You may also consider what the knowledge of the parties was as to the seriousness of the injuries and whether the amount he received was adequate in view of the situation as it appeared at that time.

There is no evidence in the case that the plaintiff was intoxicated, but in considering whether the plaintiff fully understood the situation at the time of signing the release, you may consider testimony that he drank a few beers and whiskeys prior to the signing.

In considering the question of the validity of the release, you are to bear in mind that fair settlements

are as much in the interests of the seamen as they are of the ship-owners and operators, especially since if the employers cannot fairly settle disputes with employees, then seamen are forced into formal lawsuits with the usual expense and delay and uncertainty" (R. 22-3).

As to burden of proof the Court charged:

> "As to the matter of proving the validity of the plaintiff's release, the burden of proving its validity is upon the defendant. I will explain the matter of burden of proof later in the case" (R. 23).
>
> "The next thing that I will take up with you is an explanation of the matter of burden of proof. You will come in contact with that matter as soon as you consider the validity of the release. You will remember that I told you that the defendant had the burden of proof to establish that the release is valid" (R. 25).
>
> "The party who has the burden of proof on a particular issue must prove by a fair preponderance of the evidence the necessary elements of his claim with respect to that issue" (R. 26).

Petitioner took no exception to this charge, probably because it follows so closely Mr. Justice Black's opinion in *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239.

In deciding the maintenance and cure claim the Court made special findings and conclusions:

> "The general release was executed by plaintiff freely with full understanding of his rights and without deception or coercion on the part of defendant. Judged according to the information available at the time of the signing with respect to the seriousness of the injuries the amount received by plaintiff was adequate.
>
> Plaintiff had enough intelligence to, and did, understand the situation and the risk he took in giving up the right to prosecute his claim" (R. 18).
>
> "The complaint must be dismissed as to the second cause of action by reason of the fact that

plaintiff effectively released defendant on May 8, 1956 from liability for all future claims for maintenance and cure" (R. 20).

The Court of Appeals found only one question for decision, viz., whether, as matter of law, a seaman can effectively release a claim for maintenance and cure that may, or may not, be needful in future. A majority (Clark and Moore, C. JJ.) held that he can; Gibson, D. J., dissented. The majority held:

> "The jury had before it all the facts from which it could properly evaluate the circumstances under which the release was executed.
>
> The court's findings as to the effect of the release on the maintenance and cure cause of action are amply supported by the evidence. As this court said in *Bonici* v. *Standard Oil, supra*, to change the law as plaintiff would have it, namely, to declare that a release of future maintenance and cure could never be valid, 'would be no kindness to the seaman' because '(f)air settlements are in the interest of the men, as well as of the employers' (p. 439)" (R. 49).

Reasons for Not Granting the Writ

The jury and both Courts, after full and fair trial and appeal, found that petitioner had not been over-reached, deceived or coerced; that he well understood the bargain he was making; that it was a fair bargain and that he "effectively" released respondent from all further claims.

Petitioner was not left stranded and injured on a foreign shore, with a pittance for his support until he should be cured. He was brought home, paid wages until the end of the voyage, hospitalized as long as the U. S. P. H. S. doctors thought he needed it, given out-patient treatment until the U. S. P. H. S. doctors pronounced him cured and fit for duty, and he was paid maintenance and cure by respondent in full up to that date. On the same day respondent paid him an additional $300 in settlement of any

future claim he might have. As the jury and both Courts found, he "effectively" released respondent.

The suggestion that the settlement amount was inadequate finds no support in the record. The District Court found only that petitioner was "injured"; not that he was "seriously" injured (Finding 2, R. 17). The U. S. P. H. S.'s final diagnosis was "chronic lumbosacral strain". (Finding 15, R. 19). There is no evidence in the record, or any finding, that this chronic condition was proximately caused by the alleged negligence or unseaworthiness. Petitioner did not bring to the Court of Appeals, or to this Court, the evidence on the issues of negligence, unseaworthiness, contributory negligence or proximate cause. Since these elements cannot be appraised for lack of the necessary material, the suggestion that the settlement amount was inadequate must be disregarded.

There is nothing new in the holding that seamen can effectively release claims for future maintenance and cure. The Court of Appeals for the Second Circuit so held in 1939. *The S. S. Standard, Bonici* v. *Standard Oil Co. of New Jersey*, 103 F. 2d 437, *certiorari* denied, 308 U. S. 560. The Court of Appeals for the Ninth Circuit has just held the same. *Clinton* v. *United States*, 254 F. 2d 409, *certiorari* denied, 358 U. S. 941. Other cases to the same effect are: *Waters* v. *United States*, 191 F. 2d 212 (9 Cir.); *Blake* v. *W. R. Chamberlin & Co.*, 176 F. 2d 511 (9 Cir.); *The Francis Parkman*, 80 F. Supp. 22, S. D. N. Y.; *Haddock* v. *North Atlantic and Gulf S. S. Co.*, 81 F. Supp. 421, D. C. Md.; *Bandy* v. *Keystone Shipping Co.*, 100 F. Supp. 985, E. D. Pa.; *McGraw* v. *States S. S. Co.*, 116 F. Supp. 446, N. D. Cal.

There is no conflict with *Calmar S. S. Corporation* v. *Taylor*, 303 U. S. 525. Before *Calmar* this Court had never held that the right to maintenance and cure extended beyond the end of the voyage and the question was

> "• • • whether the duty of a ship owner to provide maintenance and cure for a seaman falling ill of an incurable disease while in its employ extends

to the payment of a lump sum award sufficient to defray the cost of maintenance and cure for the remainder of his life" (p. 526).

There was no question of the validity of any release. The Trial Court had found that plaintiff's illness was incurable, that he needed maintenance and cure for the rest of his life and awarded him $7,000 on the basis of his life expectancy. On appeal by the shipowner this Court reversed and held that the Court may award only such amounts as may be needful in the immediate future, of a kind and for a period which can be definitely ascertained (pp. 531-2). Thus the case dealt with what the shipowner could be *required* to pay for future maintenance, not what it might pay, and the seaman accept, voluntarily, for a release.

A seaman's right to maintenance and cure arises by operation of law, just as his claims for unseaworthiness and negligence. He is no less competent to release one than the other where, as here, he has not been misled or overreached. There is no reason why a different rule should apply.

The Petition Should be Denied.

Respectfully submitted,

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New York, N. Y.
June 15, 1959.